

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
Implementation of Section 621 (a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
protection and Competition Act of 1992	)	

**COMMENTS OF THE CITY OF CHICAGO**

The City of Chicago (“City”), by its attorney Mara S. Georges, Corporation Counsel, submits these comments in response to the Notice of Proposed Rulemaking adopted on November 3, 2005 (“NPRM”) by the Federal Communications Commission (“FCC” or “Commission”).

Like the National Association of Telecommunications Officers and Advisors (“NATOA”), the City believes that local government is best suited to review requests for franchises and applications for transfer of control sought by the new wave of entrants into the video services market, and to issue franchises in a timely manner to qualified companies. This belief is based on the City’s twenty-plus years of experience effectively managing the franchise process for traditional cable service providers.

Local oversight has facilitated the creation of new and innovated services and an unprecedented expansion of the availability of broadband services to consumers, while providing local monitoring and enforcement of service standards and other public interest goals established by local and federal law.

## **I. INTRODUCTION**

With a population of nearly three million people, the City currently enjoys the cable services of Comcast, RCN Cable and Wide Open West (“WOW”) and looks forward to the entry of additional providers whose competition should bring greater innovation and programming to its citizens. The City has been fortunate to have had several cable providers show an interest in providing cable service in Chicago over the years. The City has successfully negotiated agreements with every applicant who has either sought a franchise agreement or requested a transfer of control of an existing franchise.

In 1984, the City entered into cable franchise agreements with Group W and TCI. Pursuant to these franchises, all Chicago citizens had an opportunity to select a cable provider. In 1992, Prime Cable purchased Group W and in 1994 AT&T Broadband purchased TCI. The City approved both applications for transfer of control of these franchises. In 1996, 21<sup>st</sup> Century, the City’s first overbuilder, sought and was granted a franchise to compete with AT&T Broadband. Ameritech New Media, a Bell Operating Company affiliate, became the City’s second overbuilder in 1998 when the City granted it a franchise, again competing with AT&T Broadband. In 2000, the City approved the transfer of 21<sup>st</sup> Century’s franchise to RCN Cable and in 2001, the City approved the transfer of Ameritech New Media’s franchise to Wide Open West. Finally, in 2002, the City approved the transfer of control of all of AT&T Broadband’s franchises to Comcast. All of these approvals were issued in a timely manner.

The City of Chicago is divided into five cable TV franchise areas. Comcast and RCN serve Areas 1 and 2, Comcast is the sole provider in Areas 3 and 4, and Comcast and WOW serve Area 5. The City’s current franchise with Comcast began in 1999 and expires in 2015.

RCN Cable's Area 1 franchise began in 1996 and expires in 2011 and RCN's Area 2 franchise started in 2000 and expires in 2015. WOW's franchise commenced in 1998 and expires in 2013.

The City is not currently in negotiations regarding a franchise renewal with any of its cable providers. The City is, however, currently reviewing the Application for Consent to Transfer of Control of Cable Television Franchise (FCC Form 394) filed on December 23, 2005 by WOW and Racecar Acquisition, LLC to transfer the franchise currently held by WOW in Area 5. No Bell Operating Company nor any BOC affiliate has applied to the City for a cable franchise since Ameritech New Media left the cable business in 2001. Accordingly, the City disputes the assertion made by some that the local franchise process acts as a barrier to market entry. On the contrary, the City welcomes an opportunity to review a franchise application from AT&T (formerly SBC) or any other broadband service provider.

The City provides below a discussion of the franchising process and a description of key provisions in our cable franchise agreements and ordinances which have allowed the cable market to expand and to provide new services while at the same time protecting consumers and serving the public interest.

## **II. CABLE FRANCHISING PROCESS**

The City grants a non-exclusive cable franchise for a term of fifteen years. An applicant may apply for a franchise in one or more of the City's five franchise areas. The City seeks to grant cable franchises and renewals in a nondiscriminatory manner, taking into account all relevant facts and circumstances related to the legal, financial and technical ability of the provider, so as to allow all cable franchisees to provide service within the City on a fair and

competitive footing. In this process, the City uses its best efforts to determine the cable-related needs and interests of the community and ensures--- to the extent economically feasible---that they are addressed in the franchising process. Depending on the circumstances, provisions are requested by the City or offered by the cable operator. In either event, once agreed upon, these provisions become contractual obligations of the parties.

The material terms of all of the City's cable franchise agreements are essentially the same. However, the City has at times modified certain obligations, when necessary, in an attempt to either optimize competition for the benefit of consumers or avoid unwarranted duplication of cable industry resources.

For example, the incumbent cable providers agreed to provide free cable drops to schools, firehouses, police stations and libraries. While subsequent overbuilders agreed to do the same, the majority of the free drops were already installed by the incumbents and it would have been a waste of resources to mandate a second free connection. Another example is the City's decision to reduce RCN's Area 2 franchise build-out obligations and to agree to early termination of its Area 3 and 4 franchise agreements. Because of RCN's financial problems at the time which required it to file for bankruptcy protection, it was the City's judgment that it was better for consumers to keep RCN competing against other cable providers in at least some parts of the City than to have it cease operating altogether.

From the date the City receives a formal application until the agreement is approved by the City Council, which includes public notice and comment, new franchise agreement negotiations may require a year to conduct. Review and approval of requests for transfers of control have not exceeded the statutory 120 days provided by federal law.

### **III. CABLE FRANCHISE AGREEMENT AND ORDINANCE**

In addition to the franchise agreement negotiated with each cable operator, cable systems and operations in the City are governed by the Chicago Cable Communications Ordinance, Chicago Municipal Code, Chapter 4-280-010, et seq. and the Chicago Cable Ethics Ordinance, Chicago Municipal Code, Chapter 4-284-010 et seq..

The City created a Cable Commission to monitor, as needed, the day to day operations of cable operators. The Cable Commission meets at least once a month in public and complies with the Illinois Open Meetings Act. In addition, minutes of all meetings are recorded and are available for inspection by members of the public. Among other things, the Cable Commission resolves disagreements among franchisees, customers and public and private users of cable system facilities. These cases include situations where the cable operator has not responded to complaints for service failures, poor service or inferior audio/video signals or even when requests for service have been ignored or unfilled for whatever reason. The Cable Commission also monitors the effectiveness of all groups given responsibility for the utilization of access channels.

The City provides below a description of key provisions of the franchise agreements and the City ordinances which the City believes have served both cable operators and cable consumers.

#### **A. Franchise Fees**

The franchise agreement requires the cable provider to pay a franchise fee to the City in the amount of 5% of the cable provider's gross revenues.

#### **B. Public, Educational and Governmental Access Channel**

The franchise agreement and the cable ordinance requires that the franchise provide the following capacity for public, educational and governmental access channels: (1) One City-wide local origination channel to be used exclusively for programming produced by producers and businesses located in the City of Chicago. The purpose of the local origination channel is to serve as an environment in which aspiring local producers can develop their skills and exchange ideas and viewpoints. The cable operator has also agreed to contribute \$25,000.00 annually to the City for local origination purposes. (2) Ten percent (10%) of a cable operator's usable channels to be used by the Chicago Access Corporation ("CAC") for public access programming. The Chicago Cable Ordinance requires CAC to conduct public informational and educational activities, allocate access channel space and time for nonprofit use on a reasonable, nondiscriminatory basis; provide financial, technical and other assistance for nonprofit programming and other nonprofit uses of the cable system. The CAC cannot exclude any person or organization from use of the channels for any lawful nonprofit purpose. In addition, each franchisee has agreed to pay to the CAC a total of four hundred thousand dollars (\$400,000.00) over four years in connection with CAC's PEG capital costs. (3) Two local government access channels for the exclusive use and control of the City and other local governments. These channels are used by the City and other local government entities to inform citizens of public programs and services that are available.

#### C. Institutional Network Requirements

Cable operators have agreed to provide separate coaxial and fiber optic links between City buildings, converter boxes for fire, police, libraries and schools and fiber strands and equipment for local government data communications.

#### D. Customer Service and Consumer Protection

In 2002, the City enacted an ordinance setting forth specific customer service standards including service performance benchmarks for installations, outages and service calls to help ensure timely, efficient and effective service to customers. The ordinance requires cable operators to provide credits/refunds to customers if and when the cable operator fails to meet these benchmarks. Cable operators are also required to maintain records of outages and service interruptions including information pertaining to the number of customers affected, the cause of the interruption in service, and the amount of time it took to restore service. These records are filed with the City on a monthly basis. As of December, 2002, the City had 1,807 complaints of record and by December, 2005, the complaints of record were 1,350. Clearly, local service requirements and local oversight have helped to improve service performance to the benefit of consumers.

#### E. Cable System Build-out Schedule

Within three (3) months of the time the franchise is granted, the franchisee is required to file with the City a complete construction schedule and map based on a system design that includes distribution plant. The construction schedule should include all major facilities, fiber optic lines and fiber optic nodes for the cable system and will provide the number of plant miles that will be constructed and activated on a quarterly basis. The franchisee agrees to submit financing agreements that document sufficient financing to build the entire proposed system for approval by the City prior to commencement of construction.

The City attempts to negotiate reasonable build-out schedules in the range of three (3) to five (5) years for construction of an area-wide cable system. The first franchisees were able to

complete their build-out in three to four years while overbuilders have negotiated build-out schedules of up to five years. In addition, where justified, the City has granted extensions of time to franchises. For example, in 2000-2004, the City granted RCN Cable several extensions of time to fulfill its build-out requirements based on a showing of financial distress that eventually caused it to enter bankruptcy. Since then, RCN Cable has emerged from bankruptcy and continues to offer a competitive alternative to Comcast.

Franchisees are under an obligation to design, construct and operate a state-of-the-art cable television system. If economically feasible and viable, the franchisee is required to upgrade its system with new technology provided that it can be accomplished without adding an unwarranted financial burden to subscribers. The cable systems in the City have been upgraded on a regular basis for the benefit of consumers. For example, the system went from 450 MHZ to 550 MHZ, and then from 550 MHZ to 750 MHZ with return transmission paths capable of transmitting four (4) channels upstream and eighty (80) channels downstream; from an all coaxial design to a hybrid of a fiber backbone and coaxial distribution system; and, from using analog converter boxes to digital converter boxes. Cable modem service is available from all of the City's cable providers. The fact that franchisees have continued to make investments in system improvements demonstrates that franchisees believe that local market conditions are favorable and are not hindered local government oversight.

#### F. Insurance

The City's franchise agreements have the following insurance requirements:

(a) Workers Compensation and Employers Liability Insurance with limits of liability not less than five hundred thousand dollars (\$500,000.00) for each accident or illness.



(b) Commercial General Liability Insurance (Primary and Umbrella) or equivalent with limits of not less than ten million dollars (\$10,000,000.00) per occurrence for bodily injury, personal injury and property damage liability.

© Comprehensive automobile Liability Insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence.

(d) Professional Liability Insurance covering acts, errors or omissions shall be maintained with limits not less than one million dollars (\$1,000,000.00)

G. Bonds/Letters of Credit

The franchise agreement and cable ordinance requires, for each area franchise agreement, the posting of performance bonds starting at three million dollars (\$3,000,000.00). However, the amount of the performance bond may be reduced to two million dollars (\$2,000,000.00) upon construction of fifty (50%) of the cable operator's cable system and may be further reduced to one million dollars (\$1,000,000.00) upon completion of the construction of the cable system.

The franchise agreement also requires the filing of a letter of credit from a lending institution in the amount of five hundred thousand dollars (\$500,000.00). However, the amount of the letter of credit will be reduced to three hundred and seventy-five thousand dollars (\$375,000.00) per franchise area if the cable operator provides cable services in two of the City's franchise areas, and shall be three hundred and fifty thousand dollars (\$350,000.00) per franchise area if the cable operator provides cable service in three or more of the City's franchise areas.

The City's tailored financial security requirements that tie the amount of security to the construction completion schedule is a function of local governments' inherent ability to be able to physically observe the actual cable system deployment.

#### H. Public Right-of-Way Access

Like any other users of the public way, cable operators are required to pay all fees necessary to obtain licenses, permits and authorization for the construction, installation, maintenance and operation of the cable system. The City agrees that no special fees will be imposed, and specifically the City will not impose any fees for permits and/or inspections associated with attachments to utility poles or service drops. The City also agrees to use its best efforts to assist the franchisee in obtaining all local licenses, permits and authorizations in an expeditious and timely manner.

#### I. Enforcement Requirements

Pursuant to the franchise agreement and the City's Cable Ordinance, the City has the right to impose monetary penalties, fines, and other monetary sanctions in the event the franchisee violates the franchise agreement or the Cable Ordinance in an amount not to exceed \$750.00 per day per violation for each day the violation continues. In addition, franchisees agree that actual damages will result to the City (even though actual damages will be either impracticable or difficult to ascertain) for franchisees' material failure to comply with its construction schedule (and other material obligations of the franchise agreement) and agree to pay substituted damages to the City of up to \$750.00 per day.

Pursuant to the City's Cable ordinance and the franchise agreement, the City has the right to inspect the franchisee's books and records, to audit the franchisee and to inspect the cable system during construction, installation and maintenance of the system.

The City also requires performance testing after any new or substantially rebuilt portion of the system is made available to consumers or per a customer's request due to degraded picture

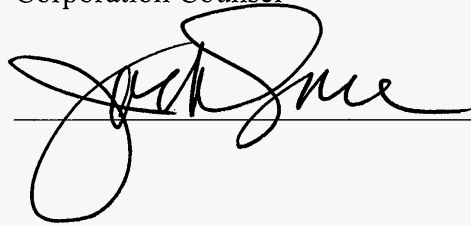
quality complaints. In addition, the City receives annual performance test results. All test results are accompanied with a report to ensure compliance with Technical Standards of the Federal Communications Commission and the City Cable Ordinance.

#### **IV. CONCLUSION**

For over twenty years, the City of Chicago has provided effective and efficient oversight of the development and expansion of the cable industry. During this time, cable systems have been continually updated to provide dynamic new services for the benefit of consumers. The City of Chicago looks forward to the entry of additional providers of broadband services and to working with the industry to provide even greater innovation that will produce new and affordable services to consumers.

Respectfully submitted,

CITY OF CHICAGO  
Mara S. Georges  
Corporation Counsel

A handwritten signature in black ink, appearing to read "Jack A. Pace", is written over a horizontal line.

Jack A. Pace  
Senior Counsel  
City of Chicago Department of Law  
30 N. La Salle Street, Suite 900  
Chicago, Illinois 60602  
312-744-6997